

CALIFORNIA COASTAL COMMISSION

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Thu 8a

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 Hearing Date: January 11-13, 2006

REGULAR CALENDAR
STAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-04-161

Applicant: Glen Steward

Agent: Phil Weatherly

Description: Construction of a 5,359 sq.ft., 2-story single-family residence on a 22,579 sq.ft. lagoon-fronting vacant lot. A pool and spa, and dedication of a 25-foot wide easement landward of the mean high tide line for lateral public access along the lagoon.

Lot Area	22,579 sq. ft.
Building Coverage	5,359 sq. ft.(24%)
Pavement Coverage	6,149 sq. ft. (27%)
Landscape Coverage	3,002 sq. ft. (13%)
Unimproved Area	8,069 sq. ft. (36%)
Parking Spaces	4
Zoning	R-1-15
Plan Designation	Residential Low Medium (0-4)
Ht abv fin grade	30 feet

Site: 4481 Adams Street, Agua Hedionda, Carlsbad, San Diego County
 APN 206-200-05.

STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed single-family residence with special conditions. The main issues raised by this proposal on a lagoon-fronting site are potential impacts to biological resources, public access and visual resources. The project, as proposed, provides for public views to the lagoon from the fronting street (by proposing a residence below street level), proposes a 25-foot wide lateral public access easement extending upland from the mean high tide line along the lagoon and proposes a 100- foot wide open space buffer between proposed development and the mean high tide line. Staff

recommends that the project be revised to prohibit grading or structures within the buffer. Other recommended conditions address building colors and water quality concerns.

Chapter 3 of the Coastal Act is the standard of review with the certified Agua Hedionda Lagoon LUP used as guidance.

Substantive File Documents: Certified Agua Hedionda LUP, CDP #6-98-14/Huber.

I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit No. 6-04-161 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions.

See attached page.

III. Special Conditions.

The permit is subject to the following conditions:

1. Revised Final Plans. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, final site and building plans approved by the City of Carlsbad which are in substantial conformance with the site plan prepared by Randy Brown, Commission date stamped received 8/1/05 submitted with this application, but that are revised as follows:

- a. The proposed detention basin, riprap energy dissipaters and flagstone steps shall be relocated outside the 100-foot-wide open space buffer.
- b. No improvements within the area subject to the public access easement shall be permitted. Public access trail improvements shall be determined in the future and require an amendment to this permit or a separate coastal development permit.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Lateral Public Access.

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to the acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. The area of dedication shall consist of the entire width of the property from the mean high tide line to a line 25 feet inland of the mean high water line, which is understood to be ambulatory from day to day. The recorded document shall include legal descriptions of both the entire project site and the area of dedication. The document shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant to the provisions of 14 CCR § 13166, to this coastal development permit. This requirement shall be reflected in the provisions of the offer.

3. Open Space Restriction.

A. No development, as defined in section 30106 of the Coastal Act shall occur in the area between the lagoon edge and 100 feet upland of Elevation 2.01 as described and depicted in an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit except for:

1. Native landscaping

AND

2. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit:

An improved pedestrian pathway within the 25-foot wide (minimum) lateral public access easement.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOI FOR THIS PERMIT, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected by this condition, as generally described above and shown on Exhibit #2 attached to the staff report.

4. Revised Landscape Plan. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval, in consultation with the Department of Fish and Game, a final landscape plan approved by the City of Carlsbad that is in substantial conformance with the plan dated received 8/1/05 by Phil Weatherly, except it shall be revised as follows:

- a. Drought tolerant, native or non-invasive plant materials shall be utilized on the site to the maximum extent feasible. Only native, non-invasive, drought-tolerant vegetation acceptable to the California Department of Fish and Game shall be installed within the 100-foot wide buffer. The portion of the buffer currently beach/cobble may be retained in its natural state as beach.

b. For visual purposes, special emphasis shall be placed on the treatment of all portions of the site that would be visible from public roads and the lagoon shoreline, and areas adjacent to view corridors. The revised landscape plan shall indicate the placement of a minimum of one native specimen size tree (24-inch box minimum) for every 10 feet of property along the south-facing portion of the lot and arranged to maximize screening of the structures from views from Agua Hedionda Lagoon and Interstate 5. A minimum of 7 trees shall be provided lagoon-ward of the building pad for the proposed residence. The required trees shall be planted within 60 days of completion of residential construction. The plan shall require the use of species that do not reach sufficient height to block public views from Adams Street. Said landscaping shall be designed to mitigate the visual impact of the structure as viewed from the lagoon and public access trail, while preserving views from the home.

c. A written commitment shall be made that all planted materials shall be maintained in good growing condition for the life of the residences.

d. A 20-foot-wide landscaped buffer using native plant materials shall be planted along Adams Street. However, species within the landscaped buffer shall not reach sufficient height to block public views from Adams Street. Maintenance requirements to assure no blockage of public views shall be incorporated into the approved plan.

e. The proposed detention basin, riprap energy dissipaters, and flagstone steps shall be removed or relocated outside the 100-foot-wide open space buffer.

f. A written commitment by the applicant that all required plantings shall be maintained in good growing conditions, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape screening requirements.

g. Five years from the date of issuance of the coastal development permit, the applicant shall submit for review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

The permittee shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved landscape plans shall be reported to the Executive Director. No changes to the landscape plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Drainage and Polluted Runoff Control Plan. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, final drainage and runoff control plans approved by the City of Carlsbad, including supporting calculations. The plans shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. In addition to the specifications above, the plans shall be in substantial conformance with the following requirements:

- (a) All BMPs (or suites of BMPs) chosen for use on the site shall be designed to treat, infiltrate or filter the amount of stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) Drainage from all roofs, parking areas, driveway area, and other impervious surfaces on the building pad shall be directed through vegetative or other media filter devices effective at removing and/or mitigating contaminants such as petroleum hydrocarbons, heavy metals, and other particulates.
- (e) Opportunities for directing runoff into pervious areas on-site for infiltration and/or percolation of rainfall through grassy swales or vegetative filter strips, shall be maximized where geotechnical concerns would not otherwise prohibit such use.
- (f) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to

determine if an amendment or new coastal development permit is required to authorize such work.

The permittee shall undertake the development in accordance with the approved drainage plans. Any proposed changes to the approved drainage plans shall be reported to the Executive Director. No changes to the drainage plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

6. Height of Structures/Future Development. This approval limits the height of the residences to no higher than the centerline of Adams Street, which is at elevation 44-ft., Mean Sea Level. The subject permit is only for the development described in coastal development permit No. 6-04-161. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the single-family residence authorized by coastal development permit No. 6-04-161. Accordingly, any future improvements to the single family residence authorized by coastal development permit No. 6-04-161 shall require an amendment to permit No. 6-04-161 from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the certified local government.

7. Exterior Building Materials. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director, a color board addressing exterior building materials and identifying that all building exteriors shall be finished in earth tones including deep shades of brown, gray and green, with no white, light or bright colors except as minor accent features.

The permittee shall undertake the development in accordance with the approved drainage plans. Any proposed changes to the approved drainage plans shall be reported to the Executive Director. No changes to the drainage plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. Deed Restriction: **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the

development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. Proposed is the construction of a 5,359 sq.ft., 2-story, 30-foot high single-family residence with an attached 1,193 sq.ft. garage and pool on a vacant 22,579 sq.ft. lot. The applicant is proposing a 100-foot wide buffer between the proposed development and elevation 2.01 ft. Mean Sea Level, identified as the Mean High Tide Line (MHTL). The applicant is also proposing to dedicate a 25-foot wide easement for public access immediately upland of the MHTL. All development is proposed to be set back 100 feet from the MHTL, except for drainage improvements consisting of a detention basin and riprap energy dissipaters, and some flagstone steps, which are proposed to be located up to 30 feet closer to the MHTL than the 100-foot setback established for the majority of the development.

The site is located south of Adams Street, on the north shore of Agua Hedionda Lagoon in the City of Carlsbad. There is an existing single-family residence approximately 150 feet west of the site, and a restaurant/boat club known as “Whitey’s Landing” adjacent to the site to the east. The site is covered with a variety of non-native vegetation, and with the exception of a small gully on the northeast portion of the site, there are no steep slopes on the site.

In May 1998, the Commission approved construction of a 4,100 sq.ft., 2-story, 30-foot high single-family residence on the lot adjacent to the subject site to the west (#6-98-14/Huber). At that time, the applicant for that project owned three adjacent lots, consisting of the subject site, and the two adjacent lots to west. The approved single-family residence would have been located on the middle lot. That project also included a 100-foot setback from the MHTL, and an offer to dedicate a 25-foot wide easement for lateral public access along the lagoon. However, the permit was never issued and has since expired.

The certified Agua Hedionda Lagoon Land Use Plan (LUP) is one of six segments of the City of Carlsbad’s LCP and Bristol Cove is within the area governed by this document. While most of the city’s coastal zone has a fully certified LCP, with the city issuing coastal development permits, an implementation program for the Agua Hedionda lagoon segment has not been certified as yet. Thus, permit responsibility remains with the Commission, and Chapter 3 of the Coastal Act is the standard of review with the certified Agua Hedionda Lagoon LUP used as guidance.

2. Wetlands/Sensitive Biological Resources. The following Chapter 3 policies of the Coastal Act apply to the subject proposal and state, in part:

Section 30230

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30233

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In wetland areas only, entrance channels for new or expanded boating facilities....
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) Restoration purposes.
- (8) Nature study, aquaculture, or similar resource dependent activities.

Section 30240

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Coastal Act Sections 30230 and 30240 call for the preservation of sensitive habitat areas, including wetlands. The project site is located along the north shore of the inner basin of Agua Hedionda Lagoon. Agua Hedionda in particular has been identified as one of 19 high priority coastal wetland acquisition areas, as referenced in Section 30233 of the Act, and contains environmentally sensitive habitat.

The project site is a lagoon-fronting hillside lot. While the lot extends to the lagoon, no wetland vegetation exists on site and no fill of wetlands is proposed. Many of the lots in this area contain coastal sage scrub habitat; however, this particular lot does not. In addition, other than a small gully on the northwestern portion of the lot, there are no steep slopes on the site. The City of Carlsbad Fire Department has indicated that no brush management will be required for the proposed project. Thus, the project will not have any direct or indirect impacts on upland environmentally sensitive habitat.

Although the site does not contain any wetland vegetation, the Commission typically requires a 100-foot buffer between new development and the water's edge of the coastal lagoon along Adams Drive. Historically, the Commission requires that buffer areas remain undeveloped to provide physical space between development and environmentally sensitive areas like Agua Hedionda Lagoon. This intervening space provides an upland area for animal and plant species that use the lagoon, puts distance between the lagoon resources and physical development, and reduces adverse impacts associated with development, such as runoff and siltation from grading, impacts associated with construction debris and debris generated by residential use, and disturbance from people and domestic animals.

The applicant is proposing a 100-foot wide buffer measured from the mean high tide line (MHTL), shown as the 2.1-ft. MSL elevation. The upper boundary of the buffer would be at a retaining wall separating a private pool area from the buffer. The 100-foot buffer proposed at this location is somewhat different than wetland buffers typically imposed by the Commission in other areas, because in this particular case, some development will be actually required to be located in the buffer. Specifically, the applicant has proposed, and under the terms of the LUP would be required, to offer an ambulatory easement for public access consisting of the 25 feet landward of the Mean High Tide Line (see Public Access/Recreation, below, for detailed discussion of the access easement). Acknowledging that some activity will be occurring with the buffer, the Commission has

permitted minor drainage improvements and the above mentioned low intensity public improvements within the buffer area along the lagoon (e.g., #6-98-14/Huber).

However, the applicant is proposing to locate a large, shallow detention basin with a storage capacity of 690 cubic feet just lagoon-ward of the proposed development, within the 100-foot buffer (see Exhibit #2). The basin would be as close as 70 feet from the MHTL. Two riprap energy dissipaters would be located within the basin. Substantial grading within the buffer would be required to construct the basin. Although the intent of the desolation basin is to protect water quality, the basin would represent a private improvement and landform alteration in an area that is supposed be reserved for native habitat. The proposed pool and spa immediately upland of the 100-foot buffer are still in the concept stage of development, and it appears that with some rearrangement of the pool and spa, the retaining wall could be moved to be within the required setback and detention basin could be fitted into the remaining land between the future water elements and the 100-foot setback. Staff at the City of Carlsbad Engineering Department have indicated that the detention basin is not a required element of the City's approval.

While the use of the buffer zone for minor water quality improvements would be within keeping with Commission precedents in this area, grading and recontouring a large part of the buffer for this use is not. Furthermore, the applicant has proposed locating several flagstone steps within the buffer, which is similarly inappropriate in a natural buffer area. Given that a portion of the buffer area is already expected to be used for public access, it is particularly important that the remaining buffer area be preserved and restored in a natural state. Therefore, Special Condition #1 requires the submittal of revised plans eliminating any private improvements within the 100-foot buffer. The applicant is proposing to vegetated the buffer with native shrubs and grasses. Special Condition #3 requires that an open space restriction be placed over the buffer area to ensure no encroachments other than native vegetation occur within this area.

In addition, the applicant has submitted a preliminary landscape plan that indicates the site would be planted with ornamental vegetation around the house, including Jacarandas and several variety of palm trees at the top and sides of the south-facing slope located between the residence and the lagoon. However, based on the project's location adjacent to an environmentally sensitive area, Agua Hedionda Lagoon, the Commission finds that native landscaping should be installed to restore area habitat values and to assure that the scenic values in the area are maintained. Therefore, Special Condition #4 requires submittal of a revised landscape plan, using native and non-invasive plant materials on the site.

In summary, the subject site does not contain any sensitive vegetation, but it is adjacent to Agua Hedionda lagoon. Special Conditions place a 100-foot open space buffer next to the lagoon, and require the use of native plants on the site. As conditioned to eliminate private encroachments in the buffer, the Commission finds the setback adequate to protect the down slope lagoon. Therefore, the project is consistent with the resource protection policies of the Coastal Act.

3. Public Access/Recreation. Public access along and to the waters of Agua Hedionda Lagoon is an important resource because of the recreational nature of the lagoon. It is the only lagoon in San Diego County where water related uses are permitted. The following Coastal Act sections are applicable to the proposed project.

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 (in part)

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, [or]
- (2) adequate access exists nearby

Section 30604(c) of the Act requires that a specific access finding be made for any development located between the sea and the first public roadway. In this particular location, Adams Street serves as the first public roadway and the proposed development would be located between Adams Street and Agua Hedionda Lagoon.

Pursuant to these sections of the Act, the certified Agua Hedionda Land Use Plan contains a detailed set of public access policies.

Policy 7.1

Bicycle routes, and accessory facilities such as bike racks, benches, trash containers and drinking fountains shall be installed at the locations indicated on Exhibit I.

Policy 7.2

Pedestrian accessways shall be located as shown on Exhibit J.

Policy 7.3

All pedestrian trails shall be constructed to a minimum width of 5 feet. Combination bicycle/pedestrian easements and lateral easements shall be a minimum of 25 feet in width.

Policy 7.6 (in part)

Access to and along the north shore of the lagoon shall be made continuous, to the maximum extent feasible, and shall be provided as a condition of development for all shorefront properties. All accessways shall be designed in such a manner as to allow for reasonable use by any member of the general public, and shall be designed to accommodate bicycle as well as pedestrian use. [...]

Policy 7.8

Design of Access Easements, Buffer Areas, and Adjacent Development

All accessways should be designed to enhance recreational use, and should include adequate open spaces for light and air, adequate signing, inviting design, and provision of adequate buffer areas and buffer landscaping to minimize conflicts with adjacent private property. All lateral public access easements shall be at least 25 feet in width landward of the mean high tide line, unless infeasible due to extreme topographic limitation. The portion of the easement which is actually developed for access purposes may be less than the complete 25-foot width, provided that the developed area is sufficient to reasonably accommodate anticipated access demand. To meet these objectives, the following design criteria shall apply to all structures proposed to be located within 100 feet of any access easement or other public recreational area:

- a) All portions of such structures shall be set back from the point nearest any public use area a distance equivalent to twice the height of the structure above finished grade; and
- b) New development shall provide landscaping adequate to minimize visual intrusion upon public use areas.

Most of the north shore lagoon-fronting lots between Agua Hedionda Lagoon and Adams Street, the designated first coastal roadway in the area, from 1-5 to Bristol Cove (about 1 mile), are still undeveloped. As such, the majority of the public access path called for in the certified Agua Hedionda LUP has yet to be constructed. The LUP states the north shore trail is to be constructed by individual private developments as a condition of approval of obtaining a coastal development permit if the City or another organization does not build it. The LUP requires that both the recordation of a public access easement and the physical construction of that part of the trail be provided. The LUP identifies that both pedestrian and bicycle access shall be provided along the north shore of Agua Hedionda Lagoon within a 25-foot wide easement upland of the mean high tide line. The

LUP also identifies other access related requirements for new development, including design criteria for all structures proposed to be located within 100 feet of any access easement.

To date, lateral access offers to dedicate easements have been recorded on several north shore sites between Adams Street and the lagoon, including Remington (#6-90-93), L&R (#6-88-477), Mellgren (#6-87-36), Abeledo (#6-86-035), a 23-unit Bristol Cove condominium project (CDP #F 1012), Cade (#6-96-159), Huber (#6-98-14) and Gallagher (#6-00-80). Three sites (L&R, Bristol Cove, Cade) were identified as having constructed their segment of the public access path called for in the LUP.

The project site is located between Agua Hedionda Lagoon and Adams Street and contains roughly 137 feet of actual shoreline frontage. The hillside, lagoon-fronting site has been extensively used by hikers in flatter areas near the water's edge. Thus, the public may have a prescriptive right of lateral access across this site. The LUP requires that a lateral public access easement at least 25 feet in width be provided landward of the mean high tide line and that a trail be built within the easement. The City did not require any discretionary approvals for this development, finding the project consistent with existing land use and zoning designations.

In recognition of the requirements of the Agua Hedionda LUP and past Commission permit decisions in the area, the applicant proposes to dedicate a lateral public access easement to extend 25-feet upland and ambulatory from a mean high tide line elevation of 2.0-ft. MSL. Special Condition #2 memorializes the applicant's proposal and requires the proposed easement to be recorded in a form and content acceptable to the Executive Director. The easement area shall be for lateral public access and passive recreational use along the lagoon shoreline and shall extend upland 25-feet from the mean high tide line which is understood to be ambulatory from day to day. In this way, the proposed easement and required trail segment will coincide with those to the east.

However, as described above, the proposed detention basin and steps within the buffer are not permitted. In addition to impacting biological resources, the placement of private improvements within the buffer could have an adverse impact on public access. The proposed desolation basins would result in private improvements being located as much as 30 feet closer to the public access easement than they would be otherwise. In addition, Commission staff is currently reviewing a proposal to construct a public access trail on the existing sewer easement that runs along the north shore of Agua Hedionda lagoon, including on the subject site. That easement is immediately shoreward of the proposed detention basin. Private improvements can discourage public access by suggesting that the area is not indeed open to the public. Thus, Special Condition #1 requires that the detention basin, riprap dissipaters and steps within the buffer be removed.

The Commission recognizes that either the City of Carlsbad or other appropriate agency may assume responsibility for provision of the access improvements necessary to provide access along the lagoon's entire north shore in the future when the access easements are accepted and the entire alignment open for public use. Therefore, Special Condition #1 requires that the area within the public access easement be left unimproved at this time.

In summary, as discussed above, there is some evidence of previous public use of the site for lateral access. Special Conditions require that private improvements that could interfere with public access must be relocated away from the public access easement. Thus, as proposed to provide a lateral access easement upland of the mean high tide line, which will assure continued use by the public, the Commission finds that adequate public access will be provided. With the special conditions attached, the Commission finds the project consistent with the public access policies of both the Coastal Act and the Agua Hedionda Land Use Plan.

4. Scenic Preservation. Because Agua Hedionda Lagoon and the viewshed surrounding the lagoon is both an environmentally sensitive area and major recreational resource, it was the subject of a detailed LCP Land Use Plan prepared by the City and certified by the Coastal Commission. In response to Section 30251 of the Coastal Act, one of the issues addressed in the Land Use Plan was the preservation of views from Adams Street. This street is a designated scenic corridor, which runs along the north shore of the lagoon. Policy 8.3 of the LUP requires that development of the lots that lie between Adams Street and Agua Hedionda Lagoon be designed so as to preserve the public views from Adams Street.

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Policy 8.3 Development located adjacent to scenic roadways, or located between the road and the shoreline, shall be regulated as follows:

- a) Where a significant elevation difference (e.g., 35 feet) exists between the shoreline and the first parallel public road, as in the case of Hedionda Point and Snug Harbor, no portion of a structure in the intervening area shall be permitted to exceed the elevation of the roadway.
- b) Where no significant elevation difference exists between the shoreline and the first parallel public road, permitted development in the intervening area shall provide a view corridor, of a width equivalent to at least one-third of the road frontage of the parcel, which shall be kept free of all structures and free of landscaping which at maturity would rise above a reasonable viewline from vehicles passing on the public road.
- c) On all property adjoining the shoreline, permitted development shall be designed to “step down” in height, to avoid casting shadows on shoreline

areas and to produce a perceived transition from open space areas to developed areas ...

- d) Any development proposed to be located on or near a significant landform (e.g., Agua Hedionda Point) shall be designed so as to minimize disturbance of natural landforms, and shall be developed in a manner that assures its compatibility and harmony with the natural landform through use of such architectural techniques as terraced or pole foundations and variations of roof lines to complement the topography

Most of the north shore lagoon lots, including the subject site, are within the public viewshed. Policy 8.3 calls for view preservation to occur through either: (a) the siting of structures at elevations below that of Adams Street adjacent to the property or (b) the preservation of one third of the width of the parcel as a "view corridor". In the case of the proposed development, the roofline of the proposed residence will not exceed the elevation of Adams Street adjacent to the project site. Thus, the project conforms to the LUP requirement. Special Condition #6 is attached regarding the maximum height for future structures on the lot and requires that the City first approve the plans confirming the structures are below the street level. In addition, this special condition notifies the applicant and future property owners that any future development of the site in the future, including additions to the house, will require review and approval by the Commission.

Special Condition #7 requires that final plans include a color board verifying that the residence will be finished in deep earthtones compatible with the surrounding hills and lagoon. In this way, the visual impact of the proposed structure will be reduced.

Landscaping is also important in minimizing visual impacts. Policy 8.1 of the LUP requires that development adjacent to Adams Avenue, the fronting street, shall maintain a minimum 20-foot landscaped buffer between the street and parking areas. The applicant has submitted a preliminary landscape plan that indicates the site would be planted with both ornamentals around the house and native vegetation in the 100-foot buffer. The parking areas would be setback greater than 20-feet from the street and the street setback and upper portion of the lot would be planted with a variety of non-native trees.

Additionally, to further mitigate the visual impact of the structures as seen from I-5, the future public trail and the south shore of the lagoon, the Commission finds special emphasis shall be placed on the use of trees to screen the homes, while preserving views from the home. The preliminary landscape plan indicates Jacarandas and several variety of palm trees are proposed at the top and sides of the south-facing slope located between the residence and the lagoon. As noted above, the Commission has found these non-native ornamental species to be inappropriate in a lagoon setting. Therefore, native tree species (for example, Sycamore, Willow, or Cottonwood) must be substituted. Special Condition #4 requires a revised landscape plan be submitted which indicates the placement of one native specimen size (24-inch box minimum) tree for every 10 feet of south-facing pad area lagoon-ward of the proposed building site, arranged to maximize screening of the structures from views from Aqua Hedionda Lagoon and Interstate 5. The required trees shall be planted within 60 days of completion of residential

construction and be maintained in good growing condition for the life of the residences. The plan shall also include the use of native species that do not reach sufficient height to block public views from Adams Street. Maintenance requirements to assure no blockage of public views must be incorporated into the approved plan.

Policy 7.8 of the LUP provides that a setback from the inland extent of the public access easement be provided equivalent to twice the height of the structures. This policy was included in the LUP so that an adequate setback would be provided between private/public areas to provide a greater sense of privacy for both the property owner and coastal visitors. The proposed building height of the residence is 30-feet; therefore, a 60-foot setback should be provided between the residence and the easement. Because the inland extent of the access easement will vary from day-to-day (as it is ambulatory) it is difficult to identify just where the inland extent of the easement would be at any given time. The Commission finds that for purposes of determining an adequate setback, the mean high tide line at elevation 2.1-ft. MSL can be accepted as the seaward extent of the easement. Given that, for purposes of identifying a setback, the inland extent of the easement would be 25-feet upland of the 2.0-ft. elevation. As conditioned, the proposed private improvements will be set back approximately 75 feet from that point; therefore, the project can be found consistent with the above identified LUP policy.

Special Condition #8 requires that the special conditions be recorded as a deed restriction on the property, to ensure that future property owners are aware of the conditions and restrictions on the site.

In summary, as conditioned to provide adequate native landscaping along the road and lagoon-ward of the residence which will screen the residence from public areas but not interfere with public views, limit the maximum height for future structures on the lot, require that the residence will be setback from public areas, finished in deep earthtones compatible with the surrounding hills and lagoon, and that maintenance of the landscaping be maintained in perpetuity, the Commission finds that potential visual impacts associated with the proposed development have been reduced to the maximum extent feasible, consistent with Section 30251 of the Coastal Act and the applicable policies of the Agua Hedionda Land Use Plan regarding scenic preservation.

5. Runoff/Water Quality. Section 30231 of the Coastal Act is applicable to the proposed development and states, in part:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff...

The site is immediately adjacent to Agua Hedionda Lagoon. Additionally, although the slopes on the site are less than 25% grade, the site is hillside development and the terrain is susceptible to erosive conditions. The proposed development will result in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of

existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides and pesticides; and bacteria and pathogens from animal waste.

As previously described, the proposed development includes site drainage improvements to ensure that most runoff is collected and dissipated prior to it entering the lagoon. The proposed on-site detention basin would have a storage capacity of 690 cubic feet to accommodate the increase in 10 year, 6 hour storm peak runoff due to the proposed development. Riprap energy dissipaters would be located within the basin. The Commission supports the goal of on-site detention and filtration, but as noted above, the 100-foot wetland buffer is not an appropriate place for this private improvement. Therefore, the Commission finds a revised plan must be submitted which accommodates all drainage improvements upland of the buffer. Special Condition #1 requires revised plans indicating the relocation of the detention basin and riprap.

To find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of BMPs designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the smaller, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e., the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs). Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in Special Condition #5, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

In summary, as conditioned to relocate the detention basin and require a drainage and runoff control plan which includes BMPs designed to treat, infiltrate, or filter stormwater from each runoff event up to the level indicated, the proposed development will reduce any impacts to water quality from the project to insignificant levels. Therefore, the Commission finds the proposed project, as conditioned, consistent with Section 30231 of the Coastal Act.

6. Local Coastal Planning. Section 30604 (a) requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, as conditioned, such a finding can be made.

The Agua Hedionda Land Use Plan (LUP) has been certified by the Commission but no implementing ordinances have been submitted by the City for this plan segment. Thus, the standard of review for this application is Chapter 3 policies of the Coastal Act. The Agua Hedionda Land Use Plan (LUP) designates the site for residential development. The project is consistent with that designation. As conditioned, the project is consistent with the policies of the Agua Hedionda Land Use Plan regarding scenic resources, habitat preservation and the provision of public access and also consistent with the corresponding Chapter 3 policies of the Coastal Act. Therefore approval of the project should not prejudice the ability of the City of Carlsbad to prepare a fully certifiable Local Coastal Program for its Agua Hedionda Lagoon segment.

7. California Environmental Quality Act (CEQA) Consistency. Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As discussed herein, the proposed project will not cause significant adverse impacts to the environment. Specifically, the project, as conditioned, has been found consistent with the biological and marine resources, water quality, visual resource and public access policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity might have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and is found consistent with the requirements of the Coastal Act to conform to CEQA.

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.